

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

FAO No.5342 of 2016 (O&M)

Date of decision : 09.12.2016

New India Assurance Company Limited

.....Appellant

Versus

Usha Luthra and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Vinod Gupta, Advocate for appellant.

DARSHAN SINGH, J.

The present appeal has been preferred by New India Assurance Company Limited – insurer of truck bearing registration No.HP-12A-7727 *i.e.* the offending vehicle (respondent No.4 in the claim petition) to assail award dated 08.07.2016, passed by the learned Motor Accidents Claims Tribunal, Ludhiana (hereinafter called the “Tribunal”), in a petition filed under Section 166 of the Motor Vehicles Act, 1988 (for short the “Act”), whereby respondent No.1 - claimant has been awarded compensation to the tune of ₹13,62,455/- on account of the injuries suffered by her, in the motor vehicular accident which took place on 18.07.2013.

2. Learned counsel for the appellant contended that respondent No.2 Sarabjit Singh the driver of the truck was not having any licence to

authorize him to drive the heavy transport vehicle on the date of the accident. So, the appellant-Insurance Company was not liable for the payment of the amount of compensation.

3. He further contended that the amount of compensation awarded by the learned Tribunal is also exorbitant. The claimant has been awarded ₹1,00,000/- towards future medical expenses without any medical advice. She has also been awarded ₹25,000/- for conveyance allowance for which also there is no proof. Excess amount has been awarded for pain and suffering, loss of amenities and enjoyment of life.

4. I have duly considered the aforesaid contentions.

5. On 23.11.2016, learned counsel for the appellant had sought time to inform this Court as to whether appellant-Insurance Company had given any notice to respondents No.2 & 3 to produce the documents or that any application was moved by it during the pendency of the claim petition seeking direction to respondent No.2 to produce the driving licence. Learned counsel for the appellant has very fairly conceded that neither any such application was moved before the Tribunal nor any legal notice was given to the driver or owner of the truck No.HR-12A-7727 to produce the driving licence of respondent No.2 and other documents. There is no dispute with the proposition of law that the burden to prove the violation of the terms and conditions of the insurance policy is always on the Insurance Company. In the instant case the appellant-Insurance Company has utterly failed to discharge its onus in the absence of issuance any legal notice and seeking any direction from the Court to the driver/owner of the vehicle to

produce the document. Thus, no presumption can be drawn that respondent No.2 Sarabjit Singh the driver of the truck was not holding any valid and effective driving licence at the time of the accident.

6. I also do not find any substance in the plea that the learned Tribunal has awarded exorbitant amount of compensation. As a result of the injuries received in this accident the claimant has received the grievous and multiple fractures. Her right arm was run over under the truck. She remained hospitalized with effect from 18.07.2013 to 21.08.2013 and then from 07.09.2013 to 01.10.2013 *i.e.* for a considerable long period and was stated to be still under treatment. She has also suffered 30% permanent disability due to multiple fractures in the right arm. Thus, the amount of compensation awarded by the learned Tribunal cannot be stated to be exorbitant.

7. Thus, keeping in view my aforesaid discussion, the present appeal has no merits and the same is hereby dismissed.

09.12.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No